

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EDWARD ONTIVEROS, No. CIV S-04-1141-GEB-CMK-P
Petitioner,

vs. ORDER

DIRECTOR OF CORRECTIONS,
et al.,

Respondents.

Petitioner, a state prisoner proceeding pro se, brought this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Final judgment denying the petition was entered on May 31, 2007. Petitioner's appeal, filed on December 26, 2007, was dismissed by the Ninth Circuit Court of Appeals on June 1, 2010, as untimely. Pending before the court in this closed matter is petitioner's motion for relief pursuant to Federal Rule of Civil Procedure 60 (Doc. 52).

The court may grant reconsideration of a final judgment under Federal Rules of Civil Procedure 59(e) and 60. Under Rule 60(a), the court may grant reconsideration of final judgments and any order based on clerical mistakes. Relief under this rule can be granted on the court's own motion and at any time. See Fed. R. Civ. P. 60(a). However, once an appeal has

1 been filed and docketed, leave of the appellate court is required to correct clerical mistakes while
2 the appeal is pending. See id.

3 Under Rule 60(b), the court may grant reconsideration of a final judgment and any
4 order based on, among other things: (1) mistake, inadvertence, surprise, or excusable neglect;
5 (2) newly discovered evidence which, with reasonable diligence, could not have been discovered
6 within ten days of entry of judgment; and (3) fraud, misrepresentation, or misconduct of an
7 opposing party. A motion for reconsideration on any of these grounds must be brought within a
8 reasonable time and no later than one year of entry of judgment or the order being challenged.

9 See Fed. R. Civ. P. 60(c)(1).

10 Here, petitioner's Rule 60 motion is untimely. Final judgment was entered on
11 May 31, 2007, and the current motion was filed more than one year after that date.

12 Accordingly, IT IS HEREBY ORDERED that petitioner's Rule 60 motion (Doc.
13 52) is denied as untimely.

14 Dated: February 22, 2011

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16 GARLAND E. BURRELL, JR.
17 United States District Judge

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